

HACK 207 (10200574)REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claim 53 has been amended to correctly recite being dependent on claim 52.

Claim 56 has been rejected under 35 USC 112, second paragraph, as being indefinite. It is believed that this rejection has been overcome, because the repeated phrase "further comprising" has been deleted per Examiner's implicit suggestion.

Claims 39-47, 49, 51-52, and 55 have been rejected under 35 USC 102(b) as being anticipated by Japanese Patent Nos. 51,022,577 (JP '577) in light of 75,002,901 (JP '901) and U.S. Patent No. 3,713,838 (U.S. '838). Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 102(b), for the following reasons.

JP '577 discloses a fertilizer manufactured by using waste liquor from whisky fermentation. This waste liquor is post-fermentation waste. Additionally, JP '901 refers to the use of a post-fermentation liquid waste product which is calcined to 850°C. Also, U.S. '838 disclose uses for a post-fermentation product which is further processed to produce a beer flavoring. Here, the claimed fertilizer is made from "spent grain liquor" which is pre-fermentation waste. Further, the processing involved in JP '901 renders the product devoid of the natural hormones, yeast and the like inherently present in the pre-fermentation materials of the claimed invention. The differences in pre- versus post-fermentation waste products distinguish the cited prior art from the instant claims, and thus the anticipation rejection is not proper.

Additionally, claims 39-47, 49, 52, 54 and 55 have been rejected under 35 USC 102(b) as being anticipated by Japanese Patent Nos. 02,022,191 (JP '191) or 05,163,089 (JP '089). Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 102(b), for the following reasons.

JP '191 discloses the manufacture of a fully mature compost from malt and hop residue. The JP '191 reference discloses the addition of lime in order to further activate

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the activity of the compound microorganism groups in the beer refuse and shorten the fermentation process of the compost. It is well known that this amount of lime required to achieve this end, is in excess of that recited in, e.g., claim 39, which is de minimis. Also, JP '191 and '089 disclose the preparation of fertilizers and humus-like products by decomposition of waste materials including brewing wastes. The claimed fertilizer is different from the disclosures, in that the claimed fertilizer is made from spent grain liquor, which is a pre-fermentation product not a post-fermentation product. These differences distinguish the cited prior art from the instant claims, and thus the anticipation rejection is not proper.

Furthermore, claims 39-48, 52, 54-56 have been rejected under 35 USC 102(b) as being anticipated by U.S. Patent Nos. 4,960452 and 4,661,358 to Brokken ("the Brokken patents"). Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 102(b), for the following reasons.

The Brokken patents disclose the use of brewer's wort, which is a sterilized material comprising residual wort, i.e., a post-fermentation product. As noted supra, the instant claims disclose the use of pre-fermentation product, which is distinguishable from a post-fermentation product. Moreover, the Brokken patents disclose alkali-modified brewer's wort, not just brewer's wort, i.e., the pH of the modified wort is adjusted to about 10-12. This pH would completely destroy any residual hormones which are present in a pre-fermentation product, and thus the Brokken patents' disclosure of a fertilizer that has been processed in high alkaline conditions is not encompassed by the instant claims. These differences, pre- versus post-fermentation waste and additional processing (pH adjustment to about 10-12) not present in the instant claims, distinguish the cited prior art from the instant claims, and thus the anticipation rejection is not proper.

Also, claims 39-47, 49, 52, 54-56 have been rejected under 35 USC 102(b) as being anticipated by Australian Patent No. 159/66 (AU 159/66). Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 102(b), for the following reasons.

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AU 159/66 discloses a soluble humus which is prepared with acid at elevated temperatures – up to 200° C. In contrast, the instant claims do not involve acid and high temperature treatment, steps associated with post-fermentation steps rather than pre-fermentation. As noted supra, the start materials disclosed in the instant claims are pre-fermentation by-products, not post-fermentation materials as disclosed in AU 159/66. These differences, distinguish the cited prior art from the instant claims, and thus the anticipation rejection is not proper.

Further, claims 39-49, 52, 54-56 have been rejected under 35 USC 102(b) as being anticipated by Australian Patent No. (AU) 12453/28 or U.S. Patent No. 3,983,255 to Bass. Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 102(b), for the following reasons.

AU 12453/28 discloses the use of distillery waste, e.g., spent wash, distillery slop, or like distillery residues. The distillery residues are treated with finely ground phosphatidic material (bone) and sulfuric acid with or without subsequent drying. Also, the process disclosed by AU 12453/28 involves the concentration of the waste slop material with heat. As noted supra, the use of strong acids and a high temperature process is not contemplated by the instant claims, steps associated with post-fermentation steps rather than pre-fermentation. Also, Bass discloses a fertilizer made from molasses fermentation. Again, the start materials disclosed in the instant claims are pre-fermentation by-products, not post-fermentation as disclosed in Bass. These differences, distinguish the cited prior art from the instant claims, and thus the anticipation rejection is not proper.

Finally, claims 50 and 51 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 02,022,191 in view of Japanese Patent No. 05,1630,889 and U.S. Patent No. 3,961,078, in further view of U.S. Patent No. 3,713,838. Applicant respectfully disagrees with this rejection, and traverses it. It is believed that the claims are not subject to rejection under 35 USC 103(a), for the following reasons.

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The arguments advanced above regarding the 35 U.S.C. 102(b) rejections are equally applicable to the 35 U.S.C. 103(a) rejection, i.e., the cited references teach post-fermentation by-products, not pre-fermentation by-products. Therefore, this difference distinguishes the cited prior art from the instant claims, and thus the obviousness rejection is not proper.

It is, therefore, believed that these claims are not properly rejected and the rejection should be withdrawn.

In view of the foregoing, withdrawal of all rejections and allowance of this application are respectfully requested.

Respectfully submitted,

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